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# Learning to Teach Gender, Race, Class, and Heterosexism: Challenge in the Classroom and Clinic

by Beverly Balos\*

With the continuing development of the theory of feminist jurisprudence has come the realization that an analysis that examines gender alone fails to address the complexity and reality of women's lives.<sup>1</sup> Recognizing differences of race, class, and sexual orientation is crucial to understanding the power of the dominant culture and how that power effectively silences and subordinates non-dominant groups.<sup>2</sup> Developing and co-teaching a Gender and the Law course forced me and my colleague to confront the difficult task of integrating race, class, gender, and heterosexism into our course.

Based on my experience, I find that the law students I teach have, at least on the surface, assimilated into the dominant culture fairly well by learning and applying the traditional analytical legal framework.<sup>3</sup> That is,

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\* Clinical Professor of Law, University of Minnesota. I wish to thank my co-teacher, Professor Mary Louise Fellows, for her imagination, insight, and support.

1. See Katherine Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 847-48 (1990) (exploring the issue of how to incorporate issues of oppression due to race, class, and sexual orientation while "maintaining feminism's ability to analyze the social significance of gender"). *Id.* at 847. Bartlett points to the rhetorical value, yet inherent danger, of speaking of women as having an "essential" sameness: "A theory that purports to isolate gender as a basis for oppression obscures these factors [the differences among women] and even reinforces other forms of oppression." *Id.* at 874.

2. See Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886 (1989). Finley distinguishes the power of legal language to exclude human experience from the power of feminist theory to embrace experience. The challenge, she suggests, is to unite the two. Feminist theory is derived from

the multiple experiences and voices of women as the frame of reference . . . [It] tells us to look at things in their historical, social and political context, including power and gender . . . and acknowledge that experiences of both men and women are multiple, diverse, overlapping . . . [and] break down hierarchies of race, gender or power.

*Id.* at 905.

3. See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 9 (1989). Matsuda describes the

they can analyze an appellate case by extracting the rule or rules applied by the court in its decision-making process. Based on their law school training they can identify those issues that are legally relevant and those that are not. They have been taught, and to a large extent I think they believe, that the rules are neutral, universal expressions — abstractions that are objective in nature and unchanging.<sup>4</sup>

They do not view this structure of the law as political in nature, nor do they think about the values this structure supports: who is being heard, who is being silenced and marginalized, who participated in the development of these rules, and who benefits from them. Students are not asked to consider that the law, through its claim to objectivity and neutrality, possesses the power and authority to exclude other voices and other values.<sup>5</sup>

The law's structure not only claims neutrality but also celebrates abstraction and objectivity — a presumed objectivity that in fact has been exposed by feminist legal scholars as male in method and values.<sup>6</sup> This

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recognition of the "best" law school students as those who are able to "detach law and to see it as a system that only makes sense from a particular viewpoint." People with "multiple consciousnesses," or "outsiders" in Matsuda's words, "reject narrow evidentiary concepts of relevance and credibility," make the personal political, and are "aware of the historical abuse of law to sustain existing conditions of domination." *Id.* at 8.

4. See, e.g., Finley, *supra* note 2, at 896 (footnote omitted): "To keep its operation fair in appearance . . . the law strives for rules that are universal, objective and neutral . . . . There are few ways to express within the language of law and legal reasoning the complex relationship between power, gender and knowledge." See also Bartlett, *supra* note 1, at 837. Bartlett suggests asking the "woman question" in order to reveal the non-neutrality of the law.

5. See CAROL SMART, *FEMINISM AND THE POWER OF LAW* 67 (1989). Smart describes the dilemma faced by feminist law teachers who do not want merely to inculcate their students with "male" legal principles, yet who feel constrained from entirely abandoning these historical precepts entirely. "[T]o teach differently . . . would mean the very marginalization of the knowledge imparted by this [male] means, and would ensure that students taught by feminist teachers fail their law exams." *Id.*

6. See Mary Jane Mossman, "Otherness" and the Law School: A Comment on *Teaching Gender Equality*, 1 CAN. J. OF WOMEN & THE L. 213, 216 (1985). Mossman explains that

judicial discussions of sex equality claims present an opportunity to examine (and explode) the "myth" of judicial neutrality . . . . [T]he cases lead students to examine their own values and assumptions, and frequently they develop a driving need to critique the underlying values of the legal system (impartiality, objectivity, and neutrality) and to assess these values by comparison with other options for decision-making which might be appropriately created.

*Id.* See also Adrienne Rich, *Taking Women Students Seriously*, in ON LIES, SECRETS, AND SILENCE 237 (1979) (describing the sexism of non-legal education):

[T]he content of education itself validates men even as it invalidates women. Its very message is that men have been the shapers and

traditional analytical framework is assumed to be a given rather than a social and political construct.

Having said that students have assimilated, I think we are aware that many students, especially white women and women and men of color, feel alienated and silenced by the law school experience.<sup>7</sup> They are aware that they don't fit, that something doesn't quite ring true, although identifying that something can sometimes be difficult in the culture and context of law school. Some feel they are forced to speak in two voices: the voice that echoes the dominant culture that is supported and valued in their classes or the other voice that expresses what they are really thinking and feeling.<sup>8</sup>

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thinkers of the world, and that this is only natural. The bias of higher education, including the so-called sciences, is white and male, racist and sexist; and this bias is expressed in both subtle and blatant ways . . . . Sexist grammar burns into the brains of little girls and young women a message that the male is the norm, the standard, the central figure beside which we are the deviants, the marginal, the dependent variables. It lays the foundation for androcentric thinking, and leaves men safe in their solipsistic tunnel-vision.

*Id.* at 241.

7. See Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 138-39 (1988):

Anecdotal evidence suggests that many women students still perceive the law school environment as hostile to women. Because the agenda is set by and run by white middle-class males, women, like racial minorities, often feel alienated in the classroom. As a result they become silent in class . . . . They are silent because they believe that women are largely ignored or invisible in law school classrooms. The feeling of alienation is reinforced by the use of sexist textbooks and sexist language.

*Id.* (footnotes omitted). See also Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988), in which the authors, classmates in the Yale Law School class of 1987, describe beginning a group for women law students in response to their feelings of alienation at the law school. The group also compiled data on women's participation in law school classes over the three-year course of study. They discuss "four faces of alienation: from ourselves, from the law school community, from the classroom, and from the content of legal education."

Adrienne Rich speaks of women's higher education generally as being inextricably shaped by their position in the world:

Women and men do not receive an equal education because outside the classroom women are perceived not as sovereign beings but as prey . . . . The undermining of self, of a woman's sense of her right to occupy space and walk freely in the world, is deeply relevant to education . . . . If it is dangerous for me to walk home late of an evening from the library, *because I am a woman and can be raped*, how self-possessed, how exuberant can I feel as I sit working in that library?

Rich, *supra* note 6, at 241-42.

8. Weiss & Melling, *supra* note 7, at 1320:

Women feared losing one voice, drowned by another, the language of

Law, like science, makes a claim to truth, a claim intertwined with the law's exercise of power. We can see that law exercises power not simply in its societal effects but also in its ability to disqualify other knowledge and experience.<sup>9</sup> Non-legal knowledge is therefore suspect and/or secondary.<sup>10</sup> Everyday experiences are of little interest in terms of their meaning for individuals.<sup>11</sup>

Feminist jurisprudence criticizes the traditional analysis by demonstrating that the so-called neutral principles of law are in fact gendered.<sup>12</sup> This critique exposes: that the law is structured to support

logic and argument replacing that of empathy and connection. They did not want to sit, detached like a judge, and decide for or against a relationship. Nor did they want to abuse a newfound power, of finding flaws in every argument, by using it against loved ones . . . . We sometimes found ourselves talking like lawyers, not like ourselves.

See also Matsuda, *supra* note 3, at 7-8 (describing the "bifurcated thinking" of a student with a "women-of-color" consciousness: such a woman may feel free to voice her feelings on certain women's issues in the context of a class discussion led by a female law professor yet may remain silent on issues of white privilege and misperception when the female professor is white). This leads a woman of multiple consciousnesses to learn to "peel away layers of consciousness like layers of an onion." *Id.* at 8.

9. Mary Jane Mossman, *Feminism and Legal Method: The Difference It Makes*, 3 AUSTRALIAN J. OF L. & SOC'Y 30, 44-45 (1986) (information is excluded by defining the boundaries of a case, by defining the relevant facts, and by picking which case law is applicable as binding precedent). To illustrate the third element, Mossman points out that judges often consider abstract principles from prior cases more relevant than some of the facts of the present case. Pointing to judicial decisions on voting rights cases that ignored women's historical exclusion from voting and law-making, Mossman remarks that "[t]he irony of solemn judicial reliance on precedent in the context of significant efforts by women to change the course of history underlines the significant role of legal method in preserving the status quo." *Id.* at 45. See also Smart, *supra* note 6, at 21-22 (explaining Mossman's theory of traditional legal method, including "defining 'relevance,'" a concept that serves to perpetuate oppression in some cases by deeming "relevant" certain information, such as a rape victim's history of sexual activity).

10. Smart, *supra* note 5, at 10-11.

11. See Weiss & Melling, *supra* note 7, at 1347-48. The authors remark upon their fellow students who found the law school education "disconnected from 'reality.'"

Students construct hypotheticals as implausible as "What if Eleanor Roosevelt could fly." Professors don't care who the parties are. Judicial opinions treat "the facts" in one paragraph and "the reasoning" in page after page. The assumption underlying this tilt toward analysis is that too close attention to the particulars of a case will frustrate its categorization and so foil the law's attempt to treat "like cases alike." But even accepting that categorization is necessary to law's goals, the women interviewed reject the notion that blindness to the facts is necessary to categorization. A judge needs her powers of description, of empathy, as well as of analysis.

12. See Bartlett, *supra* note 1, at 847 (describing the efforts of feminists to use the "woman question" to uncover gender bias in the law). The "woman question" also

the dominant white male heterosexual culture; that certain values of that dominant culture inform the law, including male access to women and women's services — domestic, professional, and sexual; that women and women's concerns are trivialized and marginalized; that women, when we have the opportunity to speak, are not to be believed; that the standard against which we are measured is the white male standard (for instance in self-defense law and in obtaining employment or admission to law school); that the concept of difference and sameness in sex discrimination analysis is in fact difference from white males or sameness as white males;<sup>13</sup> and that equality is equality with white males.<sup>14</sup> Even the language we use in legal discourse is embedded with the dominant culture's framework. Within this framework are many differences. For example, women of color experience the dominant culture in a way that is different from, not just additional to, the way white women experience dominant culture.<sup>15</sup> We must learn from these differences and be open to the notion of multiple consciousness and recognize that categories that define non-dominant groups in society may be tentative, contextual, and relational.<sup>16</sup>

With this feminist analysis in mind, we must now take a step back and consider the context of law school and law school education. Traditional law school education aims at teaching students to think like law-

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reveals the bias inherent in the thought of white, privileged women whose feminism ignores its own non-universality to women. The "woman question" assumes that "some features of the law may be not only nonneutral in a general sense, but also 'male' in a specific sense." *Id.* at 837.

13. See *Feminist Discourse, Moral Values, and the Law — A Conversation*, 34 BUFF. L. REV. 11, 21 (1985), in which Catherine MacKinnon commented that:

[Y]ou realize that the options of either being the same as men or being different from men are just two ways of having men as your standard. Men are set up as a standard for women by saying either "You can be the same as men, and *then* you will be equal," or, "You can be different from men, and *then* you will be *women*."

14. See Carrie Menkel-Meadow, *The Fem-Crits Go to Law School*, 38 J. LEGAL EDUC. 61, 73 (1988), in which Menkel-Meadow explains,

Equality is not measured in terms of collective or group (i.e. women's) characteristics or needs. A demand to be treated "equally" subjects claimers to the definition of "equality" (male and individualistic) of those already in power; it has not often permitted outsiders to enter into the conversation that helps define what equality is.

15. See Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 589 (1990). Harris suggests that until feminists recognize that neither gender nor race can be isolated factors, black women "will never be more than a crossroads between two kinds of domination . . . . [W]e will always be required to choose pieces of ourselves to present as wholeness." *Id.* (footnote omitted).

16. See Matsuda, *supra* note 3, at 7-8.

yers.<sup>17</sup> It trains them to be abstract, to distance themselves, and to apply so-called neutral rules and policy.<sup>18</sup> This training in thinking like a lawyer takes place in a hierarchical setting that replicates the hierarchical framework of the legal system. There is a professor — usually white, usually male — who controls the content and flow of information in the classroom. The professor has power, and the students do not.<sup>19</sup> This hierarchical relationship reinforces women's silence in the classroom: Women generally are called on and volunteer less often, and when they speak are not as respectfully received.<sup>20</sup> White women and women of color,

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17. See Menkel-Meadow, *supra* note 14, at 67-68.

18. See *id.* at 68. Menkel-Meadow describes the "dominant" level of law school discourse as that which focuses on the "correct" rule and "three or four competing policy considerations, e.g. efficiency, predictability, flexibility, fairness" while it discounts other types of discussion. The "lower" level of discourse involves the human element, the actual parties and their concerns. A "higher" level focuses on broad patterns of the rules as affected by politics and "social theory."

19. See Weiss & Melling, *supra* note 7, at 1341. The authors point to the common professorial method of polarizing discussions in order to encourage argument: "Polarization banishes confusion and, with it, questions, thereby imposing on us the burden of seeming sure and robbing us of opportunities for tentative exploration. On those of us who will not subsume affect in analysis, nor pretend certainty, polarization imposes silence."

See also Norman Redlich, *The Moral Value of Clinical Legal Education: A Reply*, 33 J. LEGAL EDUC. 613, 615-16 (1983). Redlich compares the traditional law classroom setting with the practice of law in a large corporate firm and distinguishes clinical education as training law students to work with "real people."

[T]he skills which law schools reward in traditional classroom teaching emphasize, far more than clinics do, the characteristics of manipulation and competitiveness . . . . In terms of value systems, there is no real gap between the law school and the corporate practice which is the career objective of most of the students at the school. The role-model in a law school is a professor who dominates the classroom; the role-model in a law firm is the senior partner. The emphasis in law school is on concepts, analytical skills, writing skills, and a substantive body of law which is closely related to the interests of corporate clients; law firms supplement these skills by gradually exposing the young lawyer to facts, real clients, negotiation and litigation.

*Id.*

20. See Weiss & Melling, *supra* note 7, at 1364-65. An on-going study of Yale law students enrolled in nineteen courses from the fall of 1984 to the spring of 1987 concluded that the average ratio of men's class participation to women's was 1.63 to 1. In a similar 1987 study involving 343 Stanford law students and 892 Stanford law graduates, participants were asked about class participation and had to respond using a five-point scale on a continuum ranging from one ("never") to five ("at least once a day"). When asked how frequently they had asked questions in class, male graduates' responses averaged 3 on the five-point scale; the female graduates' responses averaged 2.4. Similarly, in response to how frequently they had volunteered answers in class, the male graduates' average was 3, while the female graduates' average was 2.5. Law students' responses revealed the same trend: when asked about the frequency with which they asked questions in class, male students had a 3.2 average on the five-point scale; female students' average was 2.8. The average male response to whether

when speaking, are forced to use two voices: the voice used in interaction with the dominant culture as a method of survival and the voice, not heard, of true thoughts and feelings.<sup>21</sup>

There are, of course, additional hierarchies. One that we are all too familiar with is the hierarchy within the law school in which the actual practice of law is devalued even though this is what the vast majority of the students will go on to do. Along with practice, clinical teaching is devalued and marginalized in a variety of ways — from the resources devoted to it, to its method of funding, to the status of those who teach in the clinical programs.<sup>22</sup>

But in spite of, or perhaps because of, being devalued, clinical teaching that attempts to integrate theory and practice provides an important opportunity to transform the content, as well as the method, of legal education.<sup>23</sup> Being in a subordinate position within the law school community

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he volunteered answers in class was 3.1; the female average was 2.7. Janet Taber, Marguerite Grant, Mary Huser, Rise Norman, James Sutton, Clarence Wong, Louise Parker & Claire Picard, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1232-33, 1239 (1988).

21. Matsuda, *supra* note 3, at 7-8. See also Ruth P. Knight, *Remembering*, 40 J. LEGAL EDUC. 97, 98-99 (1990). Knight recalls law school: "It was as though the fact patterns no longer had anything to do with passion and pain and other humanizing elements, and that former humans — inferior ones — litigated for the sole purpose of providing tired law students with case precedent."

22. See Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87, 89 (1988). Schneider comments:

There are too few women faculty members at most schools and many who are on law faculties are not in tenure-track positions. They are clustered in clinical or legal writing jobs that frequently demand the most challenging work, but for less pay, long-term security, or status than other faculty members receive.

*Id.* (Footnote omitted).

See also Robert Stevens, *American Legal Scholarship: Structural Constraints & Intellectual Conceptualism*, 33 J. LEGAL EDUC. 442, 446 (1983). Stevens elaborates on the isolation of academically oriented professors from the actual practice of law: "Indeed, to have written the standard practitioner's work in a substantive field of law might well be the kiss of death for one who wants to be employed in one of our leading law schools." The irony, he suggests, is that "students come to law schools to be lawyers; most law professors teach because they do not want to practice." *Id.* at 448.

23. See William Pincus, *Legal Clinics in the Law Schools*, in CLINICAL EDUCATION FOR LAW STUDENTS 241 (1980). Pincus traces a historical development of legal education that focuses more on theoretical than practical skills. Looking back to the early 1900s, Pincus notes the allegiance between bar members, who wanted to limit access to the profession, and legal educators, who wanted legal education to continue for as long as possible. *Id.* at 247. Thus, rather than training students in practical skills, law schools increasingly relied on classroom teaching extended over three years. *Id.* at 247-48. As legal education became more "professionalized," it became "less concerned with actual preparation for the professional role of advice to and represen-



provides those who teach clinics a more immediate and perhaps concrete incentive to think about and integrate the complex interrelationships between legal theory, client concerns, and methods of practice and to attempt to transform those structures to connect more fully the issues of race, class, gender, and sexual orientation.

From this status clinicians can, and do, attempt to confront some of the inherent dominant cultural values in legal practice.<sup>24</sup> Many clinical programs have as their client base low-income people.<sup>25</sup> Inherent in this client base is a source of class, gender, and racial differences that can be explored with the students in the course of their representation of clients. The learning-from-experience model in clinical teaching, along with the critique and evaluation of the experience that students engage in with their clinical teachers, enables students to learn the law and legal procedures without the comforting techniques of abstraction and distance. To paraphrase Mari Matsuda, distance allows you to ignore the ugliness of oppression.<sup>26</sup> Because the clinical learning experience by its nature challenges that abstraction and distance, clinical courses have the potential to open to students the multiplicity of viewpoints of the oppressed.

The real work of practicing law in a supervised and self-reflective setting enables students, with the help and guidance of the clinical teacher, to think about their role as an attorney in a legal system that elevates

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tation of individuals." *Id.* at 245-46.

The growth of academic law training has carried with it status and respect for, if not adoration of, the academic lawyer as the model for students to look up to. To equal or outwit the classroom law teacher is the highest achievement a student can aspire to. To be granted recognition for research and writing, the skills treasured by the best academic lawyers, is another goal of law students under the present system . . . . To add clinical training as the culmination of law school training inevitably dilutes the impact of the academic teacher model on the students. It brings students into a collegial relationship with law practitioner-teachers. In such a changed setting, rather than being the ultimate, the academic law teacher may become only a hurdle for the student on his way to the clinical phase, as is the case in medical schools, where the first two years are often viewed as a necessary evil to be suffered in order to get to the last two years which are clinical.

*Id.* at 258-59. See also Paul W. Spiegelman, *Integrating Doctrine, Theory, and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, 38 J. LEGAL EDUC. 243, 257 (1988)(pointing to the benefits of experiential learning).

24. See Pincus, *supra* note 23, at 268-69. See also Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1689 (1991)(describing the coming together in the clinic of the "lowest rungs of many social hierarchies," which provides an opportunity "to consider various approaches to ameliorating conditions of inequality").

25. Pincus, *supra* note 23, at 267.

26. Matsuda, *supra* note 3, at 9.

the interests and values of the dominant group over those of their client.<sup>27</sup> It requires students to think critically about the real values of the system and how that system affects the lives of those who are in a subordinate position, such as people of color, lesbians, gay men, and white women, among others.

In the course of our work we struggle with the paradox of using legal methods to obtain rights for our clients while recognizing the inherent limitations of rights discourse.<sup>28</sup> We know that rights discourse oversimplifies complex power relations.<sup>29</sup> The granting of rights to a subordinate class may create the illusion that a power difference has been resolved.

In fact, the exercise of a right does not necessarily empower the subordinate class member. Relying on rights may very well lead to confrontation with competing rights.<sup>30</sup> Rights may be appropriated by the more powerful. This has been the result when women have achieved some legal redress or right; the consequence has, in fact, been an addi-

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27. See generally DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (1983). See also Pincus, *supra* note 23, at 254-55 (summarizing the advantages of clinical education):

It helps to offset the development of arrogance — a self-satisfied intellectual elitism. It gives reality to other people when the professional serves . . . . It teaches the necessity of persistence and application, and develops the fiber to withstand the crushing effects of frustration . . . . It diminishes the self-centeredness of higher education — the all consuming drive for credentials to cash in — by placing the professional-to-be in a helping relationship to another . . . . [and f]inally, it helps to develop the judgment which instinctively leans toward the real values over the spurious ones.

28. See Smart, *supra* note 5, at 138-39 (noting that the rhetoric of rights discourse is becoming exhausted because of the absence in modern statutory law of the direct allocation of rights to one class of citizens over another, as had been the case during the first wave of feminism) and at 143-45 (noting, however, that to couch a claim in terms of rights is a major step toward recognition of a social wrong and is a way of making such a claim "popular").

Yet Smart states that rights discourse as a legal tool for women has inherent social and legal limitations, such as a woman's reluctance to assert a legal right in certain situations or the existence of a concomitant right in the male, as in child custody or visitation disputes. *Id.* at 144-45. She also states, "in order to have any impact on law, one has to talk law's language, use legal methods, and accept legal procedures." *Id.* at 160. In other words, to ensure the existence of rights one must adopt the "androcentric" standard.

29. *Id.* at 144. In addition, the naming of a legal right does not in itself solve the fundamental problem, and resorting to the legal system is not a panacea, for "[t]here is a . . . well-founded fear that legal power works better for (white, middle-class) men than for anyone else." *Id.* at 138.

30. *Id.* at 145 (stating the accepted argument that legal procedures relating to the giving of testimony by a child victim or witness in child abuse cases cannot be substantially changed to help children testify because the change may violate the defendant's rights).

tional benefit or tool for men. An example of this appropriation, at least in Minnesota, is the increasing number of men who are obtaining Orders for Protection pursuant to the Domestic Abuse Act and using this legal tool to their own advantage.<sup>31</sup> A further limitation on the effectiveness of rights discourse is the view that rights are simply attached to an individual and provide an individual solution, despite the fact that the naming of the right often also names a social wrong. There is little support for the notion that a community or group should have access to and benefit from rights.<sup>32</sup>

The institutional oppression that confronts marginalized groups in society is made invisible in a curriculum that chooses to celebrate law within an illusion of objectivity and as an unquestioned force for progress. It is our responsibility to impart to our students the intellectual framework to consider the origins, values, and consequences of those illusions.

The difficult task of the clinical teacher is to embark on this enterprise with the students in a systematic and thoughtful manner. The inherent oppressive nature of the law and legal institutions revealed in the feminist analysis of the law must be given a central and critical place in our courses. If we are to transform legal education we must first transform our own courses. This transformation must occur with respect to both content and pedagogy. It is a mistake to assume that because our courses are clinically based we are not subject in our teaching to reinforcing the same dominant, hierarchical, cultural values that were previously described.<sup>33</sup> We are. However, including the issues of race, class, gender, and heterosexism in the classroom portion of clinical courses is a first step toward removing the tendency to teach within the traditional legal analytical framework. Integrating critical race questions and feminist

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31. The Domestic Abuse Act in its initial form was passed by the Minnesota State Legislature in 1979. At the time it was viewed as a civil remedy to aid battered women by providing a protection order, an exclusion order, child support, custody orders, etc., in appropriate circumstances. The idea for the legislation was initiated and strongly supported by a coalition of advocates for battered women. It has been amended over the years to provide broader relief as well as to prevent the issuance of mutual protective orders. Domestic Abuse Act, MINN. STAT. 518B.01 (revised 1990). An unanticipated consequence of the passage of the Act has been its increasing use by men who avail themselves of the process before their female partners do and sometimes have women removed from their homes due to an allegation of domestic abuse. Conversation with Mary Griffith, director, Hennepin County Domestic Abuse Office, in Minneapolis, Minn. (Feb. 20, 1992).

32. See Smart, *supra* note 5, at 145 (the vast majority of individuals in a class do not benefit from individual gains; gains secured when an individual proved her rights were violated under a particular legislative act).

33. See *id.* at 160 (noting that much feminist work on law has been drawn into the legal paradigm that law itself has constructed).

and class issues into simulations and other teaching techniques is essential to avoid replicating the marginalization with which we are concerned. Valuing personal experience, emotion, and stories; demonstrating that context is important with respect to case strategy; listening to the client; deciding what is relevant or irrelevant to the case through a conscious process that recognizes that a white male structure and language frames issues to lead to a particular result — all these concerns and more are necessary elements in the transformation process.<sup>34</sup>

One course I co-teach is titled Gender and the Law. It is a two-credit course that is a prerequisite to the Gender and the Law clinic. I co-teach this course with Mary Louise Fellows, a non-clinical faculty member. In designing the course we tried to be conscious of the integration of theory and practice as well as the gendered nature of the legal system and the intersection of race, class, and heterosexism with gender. We designed the syllabus to provide students with a feminist analytical framework that could then be used to analyze cases, legislation, and legal institutions. The substantive areas we cover illustrate a continuum of male violence against women. These areas include prostitution, rape, sexual harassment, and battering. Within this framework is an analysis by women of color of these same issues, as well as a critique of mainstream feminist theory. In the course we use the issue of heterosexism as a bridge between the critical theories and substantive areas.

We also incorporate different pedagogical techniques that are modeled from women's studies and clinical courses.<sup>35</sup> For example, we have a

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34. See Goldfarb, *supra* note 24, at 1686:

[A] feminist clinical program would seek to remake, and study its remaking of, the attorney-client relationship. In such a program, the student lawyer would not view the client as dominant norms typically construct her — as a person who rarely acts but is primarily acted upon, an object of the clinical program and the legal process. Rather, the client, in conjunction with the student-lawyer, has an opportunity to engage in shaping the case and in interpreting its meaning.

35. See Mossman, *supra* note 9, at 48. Mossman points to the necessity of approaching the study of feminism and the law from a non-traditional perspective. Recognizing that the law is instrumental in reinforcing patriarchal norms, she states:

[B]ecause there is so much resistance in legal method itself to ideas that challenge the status quo, there is no solution for the feminist who is a law teacher except to confront the reality that gender and power are inextricably linked in the legal method we use in our work, our discourse and our study. Honestly confronting the barriers of our conceptual framework may at least permit us to begin to ask more searching and important questions.

*Id.* (footnote omitted). Adrienne Rich suggests that

It is not easy to think like a woman in a man's world, in the world of the professions; yet the capacity to do that is a strength which we

number of simulations in the course including, simulations in sexual harassment, statutory rape, and battering. The sexual harassment simulation involves a lesbian law student of color who has been harassed by her white law professor. The statutory rape case is the *Michael M.* case — a constitutional challenge to California's statutory rape law that went to the United States Supreme Court.<sup>36</sup> The battering simulation includes a mock interview between a prosecutor and a middle-class woman who derives that economic status from her husband and who does not work outside the home.

We have incorporated fiction into the course so students will gain some notion of what the lives of white women and women of color are like and to bring the students out of the distancing of traditional legal discourse that dominates most of their classes.<sup>37</sup> We bring in a number of guest speakers with real experience in the substantive areas. The students keep journals and submit one entry every two weeks. The journals are to contain the students' reactions to the readings and class discussion. This allows students to reflect in a somewhat more private and personal way on these issues. We have two students co-lead the class discussion for many of the class sessions. The co-leaders are required to meet with us prior to class to talk about the major points and issues in the material and to discuss the pedagogical technique they will use when they co-lead.

There are, of course, a number of concerns that this course has generated as we evaluate the experience in terms of the content of the material and the pedagogical techniques we employed. Let me outline those briefly.

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can try to help our students develop. To think like a woman in a man's world means thinking critically, refusing to accept the givens, making connections between facts and ideas which men have left unconnected. It means remembering that every mind resides in a body; remaining accountable to the female bodies in which we live; constantly retesting given hypotheses against lived experience. It means a constant critique of language . . . . And it means that most difficult thing of all: listening and watching . . . for the silences, the absences, the nameless, the unspoken, the encoded — for there we will find the true knowledge of women.

Rich, *supra* note 6, at 244-45. See also Menkel-Meadow, *supra* note 14, at 81 (discussing the feminist model for empowering and open-minded problem solving): "Building trust, collaboration, engagement, and empowerment would be the pedagogical goals, rather than reinforcing the competition, individual achievement, alienation, passivity, and lack of confidence that now so pervade the classroom."

36. *Michael M. v. Superior Court*, 450 U.S. 464 (1981).

37. The fiction selections include: SANDRA CISNEROS, *THE HOUSE ON MANGE STREET* (1989), TILLIE OLSEN, *TELL ME A RIDDLE* (1956), and KATE CHOPIN, *The Story of an Hour*, in *THE AWAKENING AND SELECTED STORIES* 213-16 (Sandra Gilbert ed., 1986). We also read AUDRE LORDE, *NEED: A CHORALE FOR BLACK WOMAN VOICES* (1990), and DAVID HENRY HWANG, *M. BUTTERFLY* (1986).

First, the existence of the course itself tends to ghettoize the issues. This is a two-credit course that would disappear if we were not teaching it. It is clearly not viewed as a curricular need by the law school. However, this separation also means that the course is self-selective; that is, the students who are searching for an alternative analysis and structure tend to be the students who register for the course.

Second, having students co-lead means that as teachers we give up control to some extent — with positive and negative consequences. This arrangement allows a more concentrated one-on-one exchange and discussion of the material in the context of preparing the students to co-lead, but the loss of control also means that the classroom dialogue is less structured and some of the issues that we intended to be raised fail to be acknowledged.

Third, the emotional difficulty of the material leads students to distance themselves from the material and the conclusion of oppression. Students tend either to blame the victim, and thus separate themselves from the consequences of the area being discussed, or connect with the victim and fail to see their own particular privileges. It is necessary to impart to the class the institutional and structural nature of the oppression being analyzed and explored in the class materials.

Fourth, the requirement that students periodically submit journal entries had an unintended result. In our naivete we viewed the journal entries as a device to allow us to obtain input from students, which would provide information on whether the students were in fact understanding the material discussed in class. The journal entries did prove to be a useful device for this purpose. However, many of the students saw the journal entries as an opportunity to write in very personal ways about issues in their lives that were private and went to the very heart of their feelings. The nature and extent of the obligation placed upon the professors reading these entries must be taken seriously.

Fifth, we now understand that in designing the structure of the course we have replicated the hierarchy we were trying to analyze and deconstruct. The course itself mirrors societal hierarchy by first examining what is essentially a white feminist analysis of the law and then examining the writings of women of color who critique that analysis, thus setting up a white standard against which the multi-cultural writings are measured.

Sixth, there has been some suggestion in the class that in order to speak you must say that which is "politically correct," whatever that is. This notion of political correctness is an indication of the view that the material we are teaching has political content, which it does, but that somehow contracts, torts, and constitutional law, among others, do not.

Most difficult of all has been the personal question of what it means for me to try to teach about women of color, to confront my own privi-

lege as a white woman, and to try to impart to my students an understanding of their responsibility to educate themselves with humility.<sup>38</sup> One of the cases we include in the syllabus is *Crystal Chambers v. Omaha Girls Club*.<sup>39</sup> The case involved an African American woman employee of the Girls Club who was fired when she revealed she was pregnant. She was unmarried at the time, and the white management of the club considered her a bad role model for teenage girls. The court did not find that her dismissal was sex discrimination. As a companion to the *Chambers* case, the students read *Sapphire Bound!*, in which the author analyzes the *Chambers* case.<sup>40</sup>

After the first class session addressing this material, one of the African American women in the class read a personal statement about her own life that she had written in reaction to the class discussion. It was extraordinary and had a deep emotional effect on the class. The statement, I think, allowed those of us with privilege to see, if only in the context of this class session, our racism, and to connect our role as members of the dominant group to this woman's personal story. After her statement, we all agreed that each person in the class would have an opportunity to speak without interruption or to be free not to speak, in a classroom approximation of a Native American tradition known as a "talking circle."<sup>41</sup> The defensiveness of many of the white students who were

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38. See Adrienne Rich, *Disloyal to Civilization: Feminism, Racism, Gynophobia*, in *ON LIES, SECRETS, AND SILENCE*, *supra* note 6, at 275, 281. Looking to early feminist scholarship that was written "as if black women did not exist," Rich suggests that white feminists must attempt to understand the experiences of black women.

Even where racism is acknowledged in feminist writings, courses, conferences, it is too often out of a desire to "grasp" it as an intellectual or theoretical concept; we move too fast, as men so often do, in the effort to stay "on top" of a painful and bewildering condition, and so we lose touch with the feelings black women are trying to describe to us, their lived experience *as women*. It is far easier, especially for academically trained white women, to get an intellectual/political "fix" on the *idea* of racism, than to identify with black female experience: to explore it emotionally as part of our own.

See also Maria Lugones & Elizabeth Spelman, *Have We Got a Theory for You!*, 6 *WOMEN'S STUD INT'L F.* 573 (1983), in which the authors speak in two voices and explain that when women of color are required to use the white dominant language it distorts experience, although women of color have had to learn the dominant culture and language. The authors remind us that "the power of white/Anglo women vis-a-vis Hispanas and Black women is in inverse proportion to their working knowledge of each other." *Id.* at 580. They point out that white women must learn the text of women of color and learn to become unintrusive and patient. Further, such learning requires that white women recognize that they must come to the task without the authority of knowledge; without ready-made theories and with sensitivity, self-questioning, and circumspection.

39. *Crystal Chambers v. Omaha Girls Club*, 629 F. Supp. 925 (D. Neb. 1986).

40. Regina Austin, *Sapphire Bound!*, 1989 *WIS. L. REV.* 539.

41. My co-teacher, Mary Louise Fellows, earlier had learned of this practice in

not willing to acknowledge their ignorance was reduced.

The peril is that the burden of education is placed on the few women and men of color in the class; they are expected to be spokespeople for their communities. Of course, the very notion of a uniform or single voice to represent an entire community is fraught with problems and unexamined assumptions. The difficult responsibility we have is to recognize both the possibility of this imposed burden and the very real danger of misusing the material for our own ends rather than to value the material for its own inherent worth. This material can teach us to acknowledge our complicity in taking advantage of our own particular privilege. It is too easy, as a member of a privileged class, to appropriate the experience and stories of non-dominant groups for our own use, even with the best of intentions. We must be mindful that in all likelihood we are teaching for and to the dominant class, not to students of color. We must struggle to avoid this appropriation. It must be an ongoing struggle that challenges our own assumptions about our teaching and our own continuing responsibility to educate ourselves.

In the second semester, students who have taken the course can take the Gender and the Law clinic. In the clinic, the students represent battered women who are petitioning for an Order for Protection. Contested cases (cases in which the respondent has representation) are referred to the clinic. The clinic includes a classroom portion that emphasizes skills and the specifics of the civil legal remedies for domestic violence in Minnesota. Through this clinical experience the students are able to see the effects of race, class, and gender in the legal system. In their representation of battered women, they analyze their roles in that system as well as their relationships to their clients. Hopefully, the theoretical and analytical framework discussed in the previous semester will give them the tools to think about the process their client is now experiencing and perhaps to view that process from a different perspective. By applying a feminist analysis to the legal system that their clients are subject to, they may use that analysis to obtain the desired result.

For example, traditional legal method involves defining experiences so that certain matters are within the realm of law and others are identified as outside the realm of law.<sup>42</sup> Part of this power to define and identify includes rules regarding relevancy. The problem for the lawyer is that the client may bring in issues that are not, in legal terms, pertinent. Law translates experience into legal relevance, excluding much that might

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conversation with a Native American student in another course she taught.

42. Smart, *supra* note 5, at 11, 20-25 (explaining Mossman's three-element model of legal method: boundary definition, defining "relevance," and case analysis — all tools used to exclude certain information or previous case decisions from the dispute at hand). See also *supra* note 9.



be relevant to the client. The law has the power to ignore other stories.<sup>43</sup> The student can mediate that translation and challenge the power of law by reexamining long-held assumptions, definitions, and rules so that the client's story is more fully heard and the legal boundaries are expanded, even if only slightly. The troublesome uncertainty is whether, by working within those terms to challenge law, we cede too much.<sup>44</sup> We have a responsibility to engage in a dialogue with our students in order to address these questions.

Having indicated the concerns, it should be emphasized that the course and clinic proved to be both exciting and challenging. The students, in class, in clinic, and as evidenced by their journal entries, were engaged and were thinking in a very serious and personal way about the issues of race, class, gender, and sexual orientation in the law. Perhaps that is the start of the transformation we would like to see.

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43. Smart, *supra* note 5, at 11. Smart suggests that a mechanism to ignore other stories is built into the legal practice: "For the system to run smoothly . . . the ideal is that all parties are legally represented and that the parties say as little as possible (i.e. they are mute)."

44. See *id.* at 138. "In resorting to law, especially law structured on patriarchal precedents, women risk invoking a power that will work against them rather than for them."